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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195509
Party	Defendant The International Group, Inc.
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Submission	Answer
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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DENISE SNACKS, INC.	:	
DENISE DISTRIBUTION CORP.	:	
	:	OPPOSITION NUMBER
Opposers,	:	91195509
	:	
v.	:	
	:	
THE INTERNATIONAL GROUP, INC.	:	
	:	
Applicant	:	
-----X	:	

**ANSWER**

The Applicant, THE INTERNATIONAL GROUP, INC., the owner of, and applicant named in United States Patent and Trademark Office Application No. 77-838572 (the "Application") for the design mark "Denise Snacks" ("Applicant's Mark") for "pork skins, fried pork rinds, pork crackling, and fried chicken skins" in International Class 29, filed September 30, 2009, and published for opposition on March 2, 2010, in accordance with Rules 2.106 and 2.116 of the Trademark Rules of Practice, by its undersigned Attorney, Harry Schochat, Esq., answers the Notice of Opposition (the "Opposition") of DENISE SNACKS, INC. and DENISE DISTRIBUTION CORP. (the "Opposers") as follows:

1. The Applicant admits the allegations contained in paragraph 1 of the Opposition.
2. The Applicant lacks knowledge or information sufficient to form an opinion as to the allegations contained in paragraph 2 of the Opposition except that the Applicant denies the allegation that the Opposers have ever used the Applicant's Mark with respect to pork skins, fried pork rinds, pork crackling, and fried chicken skins, except as a secondary purchaser in the

stream of commerce of Applicant's licensee, Denise Snacks, LLC, and further denies that Opposers are the owners of the Applicant's Mark.

3. The Applicant lacks knowledge or information sufficient to form an opinion as to the allegations contained in paragraph 3 of the Opposition except that the Applicant denies that the Applicant's Mark was ever owned or used by the Opposers, whether in interstate commerce or otherwise, in connection with any goods, and further denies that the Applicant's Mark was used in commerce prior to June 23, 2003, when Denise Snacks, LLC, upon information and belief an affiliate of Opposers, entered into an agreement with the Applicant by which Applicant's fried pork skins, fried pork rinds, pork crackling, and fried chicken skins manufactured using Applicant's proprietary processes, would be sold under Applicant's Mark, as it may have existed from time to time, and distributed by Denise Snacks, LLC. The Applicant's Mark was licensed to Denise Snacks, LLC, pursuant to a written contract of even date signed by Ramon Hernandez, as President of Denise Snacks, LLC, for use in connection with the sale of the said fried pork skins, fried pork rinds, pork crackling, and fried chicken skins. The Applicant further denies that the Opposers have ever used the Applicant's Mark with respect to pork skins, fried pork rinds, pork crackling, and fried chicken skins, except as a secondary purchaser in the stream of commerce initiated by Applicant's licensee, Denise Snacks, LLC.

4. The Applicant lacks knowledge or information sufficient to form an opinion as to the allegations contained in paragraph 4 of the Opposition except that the Applicant denies that Applicant's Mark is of any value to Opposers, is distinctive of Opposers' goods, identifies and distinguishes such goods from the goods of others, symbolizes the goodwill of the Opposers, and are well known in the trade as the Opposers' goods to consumers.

5. The Applicant denies the Opposers' beliefs and allegations contained in paragraph 5 of the Opposition.
6. The Applicant denies the Opposers' beliefs and allegations contained in paragraph 6 of the Opposition.
7. The Applicant denies the Opposers' beliefs and allegations contained in paragraph 7 of the Opposition.
8. The Applicant denies the Opposers' beliefs and allegations contained in paragraph 8 of the Opposition.
9. The Applicant denies the Opposers' beliefs and allegations contained in paragraph 9 of the Opposition.
10. The Applicant denies the allegations contained in paragraph 10 of the Opposition.
11. The Applicant denies the allegations contained in paragraph 11 of the Opposition.
12. The Applicant denies the Opposers' beliefs and allegations contained in paragraph 12 of the Opposition.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. The Applicant repeats and realleges the answers to paragraphs 1-12 of the Answer with the same force and effect as if such answers were set forth in their entirety.
14. The Opposers allege use and ownership of two distinct marks, namely "Denise" and "Denise Snacks."
15. The "Denise" mark is not a registered trademark and no application for registration has been made with respect to the said "Denise" mark by the Opposers.
16. Upon information and belief, the "Denise" mark was not registrable during all relevant times, as the mark "Denise" was already registered under Registration Nos. 2768940 (filled

chocolates), 1982355 (chocolates and bakery goods), 1553113 (chocolates), 1240522 (Bakery goods, namely pastry), and 2633007 (dolls), and such marks had priority over the Opposers' alleged "Denise" mark, having been filed as early as May 18, 1981, and registered at least as early as May 13, 1983.

17. As set forth above, the word "Denise" is so diluted with regard to the Opposers' goods, that no single entity could have exclusive rights to that word, especially when Applicant's Mark is limited in use to certain goods which the Opposers have never sold in commerce, except as a secondary purchaser in the stream of commerce initiated by Applicant's licensee, Denise Snacks, LLC.

18. The exclusive use of the mark "Denise" as a word mark for food products would not be available to the Opposers.

19. Accordingly, the Opposers' alleged use of the "Denise" mark in the present Opposition has been alleged solely to cloud the issue of the right to use the said "Denise Snacks" mark, which issue is not within the jurisdiction of the Trademark Trial and Appeal Board.

20. Registration of the Applicant's Mark should be granted because it is not dilutive of the Opposers' alleged rights in the alleged "Denise" mark.

#### AS AND FOR A SECOND AFFIRMATIVE DEFENSE

21. The Applicant repeats and realleges the answers to paragraphs 1-20 of the Answer with the same force and effect as if such answers were set forth in their entirety.

22. The Opposers have failed to plead the necessary elements of the design which may cause confusion mistake or deception as to origin.

23. The Opposers have not pleaded their objections to the design of the Applicant's Mark.

24. The pleadings do not allege sufficient facts to state a claim upon which the Trademark Trial and Appeal Board could find that registration of the Applicant's Mark would cause damage to the Opposers.

25. By reason thereof, the Opposers have failed to state a claim for which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

26. The Applicant repeats and realleges the answers to paragraphs 1-25 of the Answer with the same force and effect as if such answers were set forth in their entirety.

27. Upon information and belief, the Opposers share related or common ownership with, and are successors, representatives, or assigns of Denise Snacks, LLC, a limited liability corporation organized and existing under the laws of the State of New York.

28. Upon information and belief, Ramon Hernandez is an owner, officer, and/or director of the Opposers and of Denise Snacks LLC.

29. On June 23, 2003, Denise Snacks, LLC entered into a contract with International Provisions, Inc. The said contract was signed by Ramon Hernandez in his capacity as President of Denise Snacks, LLC.

30. The contract provided, among other things, that "[t]he Denise Packaging design, but not the trade name 'Denise' . . . shall become the exclusive property of [International Provisions] as a mark for Fried Pork Skins and Fried Pork Skin Strips."

31. The contract further provided that "[International Provisions] has agreed to license the use of such of the mark 'Denise' for Fried Pork Skins and Fried Pork Skin Strips by [Denise Snacks, LLC] during the pendency of this agreement. Such license to automatically terminate upon termination of this agreement."

32. The contract further provided that “Denise [Snacks, LLC] may continue to use the Denise Packaging for any products not manufactured or sold by manufacturer, and which were distributed by [Denise Snacks, LLC].”

33. The contract contained an arbitration clause providing that any dispute arising under the agreement shall be settled by arbitration in New Haven, Connecticut, pursuant to the rules of the American Arbitration Association, Commercial Division.

34. The contract provided that the terms of the agreement shall be binding upon and inure to the benefit of the heirs, successors, representatives, and assigns of Denise Snacks, LLC, and International.

35. By assignment dated September 28, 2009, International Provisions Inc. assigned all of its right, title, and interest in the aforesaid contract to the International Group, Inc. (“International”).

36. Denise Snacks, LLC, and/or its successors, and/or assigns, are in breach of the agreement for selling competing pork skin products under the “Bemar” brand name, and by failing to pay monies due under the contract.

37. By operation of the contract, Denise Snacks, LLC’s, and/or its successors’, and/or assigns’ license to use the mark which is the subject of the Application has terminated.

38. By reason of the foregoing, International is the owner of the mark which is the subject of the Application with respect to fried pork skins, fried pork skin strips, pork crackling, and fried chicken skins.

39. The Opposition seeks to determine the right to use the Applicant’s Mark. The right to use the Applicant’s Mark is governed by the written contract between the Applicant and Denise Snacks, LLC, which has identical ownership and management with the Opposers, specifically Ramon Hernandez.

40. By reason thereof, the Trademark Trial and Appeal Board does not have jurisdiction to entertain this Opposition, and Applicant's mark should not be denied registration.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

41. The Applicant repeats and realleges the answers to paragraphs 1-40 of the Answer with the same force and effect as if such answers were set forth in their entirety.

42. The Opposers have alleged that rights to the Applicant's Mark exist in predecessors in interest and affiliates but such entities have not filed opposition to the registration of the Applicant's Mark.

43. Upon information and belief, the predecessors in interest to the Opposers, or the Opposers' related entities, as set forth in the Opposers' Notice of Opposition, were licensees of the Applicant's Mark, and such license has terminated.

44. Such predecessors in interest to the Opposers, or the Opposers' related entities have no further interest in the Applicant's Mark.

45. The Opposers have failed to plead that they are successors in interest to an entity that has rights to the Applicant's Mark.

46. By reason thereof, the Opposers lack standing to oppose the Application.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

47. The Applicant repeats and realleges the answers to paragraphs 1-46 of the Answer with the same force and effect as if such answers were set forth in their entirety.

48. The Opposers have not plead that a related party or entity owns the Applicant's Mark.

49. The Opposers' related parties or entities that may claims an ownership interest in the Applicant's Mark have not filed Notices of Opposition.

50. By reason thereof, the Opposers lack standing to oppose the Application.



AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

51. The Applicant repeats and realleges the answers to paragraphs 1-50 of the Answer with the same force and effect as if such answers were set forth in their entirety.

52. The Opposers have intentionally failed to join as an opposer Denise Snacks, LLC, the signatory to the contract between International Provisions, Inc. and Denise Snacks, LLC, which contract provided that Denise Snacks, LLC would have a license to use the Applicant's Mark during the pendency of the said contract.

53. The Opposers, sharing common ownership with Denise Snacks, LLC, know that the said contract provided that the rights to the Applicant's Mark vested in the Applicant on June 23, 2003, upon signing the contract.

54. The Opposers have intentionally omitted Denise Snacks, LLC, as an opposer in this proceeding in order to avoid the jurisdictional barrier to determination of the ownership of the Applicant's Mark.

55. Denise Snacks, Inc., Denise Distribution Corp., and Denise Snacks, LLC, (collectively the "Denise Companies") have acted in concert, under the control of Ramon Hernandez, to defraud the Applicant of the Applicant's Mark.

56. The intentional omission of Denise Snacks, LLC, from the Opposition clearly supports Applicant's allegations of the Opposers intent to defraud.

57. By reason thereof, the Opposers have perpetrated a fraud upon the Trademark Trial and Appeal Board and the Applicant.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

58. The Applicant repeats and realleges the answers to paragraphs 1-57 of the Answer with the same force and effect as if such answers were set forth in their entirety.

59. The Opposers, as successors or assigns of Denise Snacks LLC, are bound by the written contract entered into between Denise Snacks, LLC and International Provisions, as assigned to International.

60. Denise Snacks, LLC is a necessary party to the determination of the rights and interests of the Opposers and the Applicant.

61. A full and complete determination of the rights and interests of the Opposers and the Applicant cannot be determined without Denise Snacks, LLC.

62. By reason thereof, the Opposition should be dismissed.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

63. The Applicant repeats and realleges the answers to paragraphs 1-62 of the Answer with the same force and effect as if such answers were set forth in their entirety.

64. The “Denise” mark and the Applicant’s Mark are so different that there is little likelihood of confusion, mistake, or deception with respect to the source or origin of Applicant’s goods, especially when considered in light of the fact that the Applicant’s Goods have been manufactured by the Applicant at all relevant times.

65. The “Denise” mark and the Applicant’s Mark are so different that there is little likelihood that potential purchasers will believe that Opposers have authorized, sponsored, approved of, or are associated with Applicant’s goods.

66. By reason thereof, the Opposition should be dismissed.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

67. The Applicant repeats and realleges the answers to paragraphs 1-66 of the Opposition with the same force and effect as if such answers were set forth in their entirety.

68. The Opposers’ claims are barred by the doctrines of waiver and estoppel.

69. By reason thereof, the Opposition should be dismissed.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

70. The Applicant repeats and realleges the answers to paragraphs 1-69 of the Opposition with the same force and effect as if such answers were set forth in their entirety.

71. The Opposers are guilty of laches due to their unreasonable delay in failing to assert ownership of the mark which is the subject of the Application.

72. The Opposers' delay in properly asserting their claims, as aforesaid, is manifestly prejudicial and would proximately cause significant damage to the Applicant.

73. The Opposition therefore, in equity, should be dismissed with prejudice.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

74. The Applicant repeats and realleges the answers to paragraphs 1-73 of the Opposition with the same force and effect as if such answers were set forth in their entirety.

75. Upon information and belief, the Opposers have abandoned their use of the mark which is the subject of the Application for use in connection with fried pork skins, fried pork skin strips, pork crackling, and fried chicken skins.

76. By reason thereof, the Opposition should be dismissed.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

77. The Applicant repeats and realleges the answers to paragraphs 1-76 of the Answer with the same force and effect as if such answers were set forth in their entirety.

78. By reason of the aforesaid, the Opposers have unclean hands, therefore, in equity, the opposition should be dismissed with prejudice.

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE

79. The Applicant repeats and realleges the answers to paragraphs 1-78 of the Answer with the same force and effect as if such answers were set forth in their entirety.

80. By reason of the aforesaid, the Opposers are contractually estopped from opposing the registration of the Applicant's Mark.

AS AND FOR AN THIRTEENTH AFFIRMATIVE DEFENSE

81. The Applicant repeats and realleges the answers to paragraphs 1-80 of the Answer with the same force and effect as if such answers were set forth in their entirety.

82. The alleged mark "Denise" is a generic mark.

83. The Opposers have no proprietary rights in the "Denise" mark, as such mark has already been registered by another Company.

84. By reason of the aforesaid, the Opposers have failed to state a claim for which relief can be granted.

AS AND FOR AN FOURTEENTH AFFIRMATIVE DEFENSE

85. The Applicant repeats and realleges the answers to paragraphs 1-84 of the Answer with the same force and effect as if such answers were set forth in their entirety.

86. The Opposers do not have priority over the Applicant with respect to the Applicant's Mark.

87. The Opposers do not have any proprietary rights in the Applicant's Mark

88. By reason of the aforesaid, the Opposers have failed to state a claim for which relief can be granted.

**WHEREFORE**, the Applicant, the International Group, Inc., demands that the Trademark Trial and Appeal Board dismiss the Opposers' Opposition with prejudice, grant registration of the Applicant's mark, and grant such other and further relief as equity dictates.

Dated: Woodbridge, Connecticut  
August 9, 2010

A handwritten signature in black ink, appearing to read 'Harry Schochat', is written over a horizontal line.

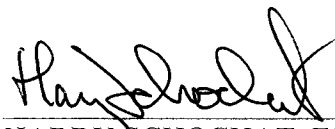
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CERTIFICATE OF SERVICE

This is to certify, in accordance with Rule 2.101(b) of the Trademark Rules of Practice, that on August 9, 2010, I served the foregoing Answer on the Opposers, by depositing a true and correct copy of same, enclosed in a post-paid, properly addressed wrapper, in a post-office/official depository under the exclusive care and custody of the United States Postal Service, addressed to:

Mr. Bruce W. Baber  
1180 Peachtree Street, N.E.  
Atlanta, GA 30309-3521

Dated: Woodbridge, Connecticut  
August 9, 2010

  
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HARRY SCHOCHAT, ESQ.  
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